IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID LANE JOHNSON	)	
	)	
Plaintiff/Movant,	)	
	)	Case No. 5:17-cv-00047
vs.	)	Judge Sara Lioi
	)	
NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, ET AL.,	)	
	)	
Defendants/Respondents.	)	

DEFENDANT NFLPA'S MEMORANDUM
IN SUPPORT OF ITS MOTION TO TRANSFER VENUE

PRELIMINARY STATEMENT

This case has no connection to Akron or to Ohio. None of the parties are located in Ohio; none of the material events underlying this action occurred in Ohio; none of the evidence relating to this dispute is located in Ohio; and no witnesses are located in Ohio. In fact, the *only* connection that Ohio has to this action is that it is the location of plaintiff's counsel's law firm. The convenience of plaintiff's counsel is irrelevant to assessing whether venue is proper. *See P.R. Chunk, Inc. v. Martin Marietta Materials, Inc.*, No. 301CV7643, 2002 WL 818068, at *1-2 (N.D. Ohio Mar. 8, 2002) (granting defendant's motion to transfer where it appeared that the principal reason that the action was filed in this district was because plaintiff's counsel was located in Ohio).

In stark contrast to the indisputable lack of connection with Ohio, this action bears a strong relationship to New York City, and thus should be transferred to the Southern District of New York.

First, New York is unquestionably a more convenient venue for the parties. The National Football League ("NFL") and National Football League Management Council ("NFLMC") are headquartered in New York City, while the NFLPA is headquartered in Washington, D.C., which is a shorter distance to New York City than to Akron. *See* Compl. and Pet. to Vacate Arbitration Award ("Compl."), ¶¶ 2-4, Doc. No. 1 at 2-3.

In addition, though Johnson cites only to his residence in Oklahoma (*Id.* ¶ 1, Doc. No. 1 at 2), he works in Philadelphia and in recent National Labor Relations Board ("NLRB") filings by Johnson and his counsel here, Johnson identified *Philadelphia* as his address.[1] Given New York's close proximity to Philadelphia, and the myriad travel options (including a mere two-hour drive and approximately one-hour high-speed train ride), New York is also unquestionably a more convenient forum than Ohio for Johnson. And even when Johnson is in Oklahoma, Ohio is no more convenient than New York.

Second, all of the material events underlying plaintiff's action took place in New York City. Specifically, Johnson seeks to vacate an arbitration award that (1) resulted from an arbitration that was held in New York, (2) affirmed his suspension issued by the NFL in New York, (3) was issued pursuant to the collectively-bargained Performance Enhancing Substances Policy (the "Policy"), which is governed by New York law and (4) was issued by Arbitrator James Carter, a senior counsel in the New York offices of WilmerHale. Johnson's NLRB charges against the NFLMC and NFLPA are also pending in New York City. Nothing relevant to this matter has happened in Ohio.

[1] To avoid disclosure of Johnson's street address in Philadelphia, the NFLPA has not filed as exhibits the NLRB charges in which Johnson and his counsel identified Philadelphia as Johnson's address, but the NFLPA will promptly do so if the Court prefers.

Third, New York City is a more convenient venue for witnesses. All NFL, NFLMC and NFLPA executives are located in the New York or Washington, D.C. areas, and thus to the extent their testimony were to be required, New York would be far more convenient for them than Ohio. In addition, Ohio is not a more convenient location for the non-party witnesses who Johnson subpoenaed just after filing his lawsuit (in violation of Federal Rule 26) and who are located in South Carolina and California. *See* Subpoenas to Produce Documents, attached hereto as Ex. A. There are exponentially more travel options from those locales to New York and its three airports. Not one witness—party or non-party—resides in this district.

Fourth, since the NFL and NFLMC are headquartered in New York City and the NFLPA is headquartered in Washington, D.C., any evidence relating to this dispute in defendants' possession is located in New York City or Washington, D.C. Plaintiff cannot credibly claim that any evidence is located in this district.

Fifth, the caseload per judge is nearly identical in the Southern District of New York and this Court, and thus plaintiff has no argument that this case would be resolved more slowly in New York.

For all of these reasons, as well as those set forth below, venue is not appropriate in this district, and the action should be transferred to the Southern District of New York. Alternatively, and for similar reasons to those described above, this action should be transferred to the District Court for the District of Columbia where the NFLPA is headquartered if this Court finds that it is a more appropriate forum than New York. Under no analysis would Ohio—which has no connection to this dispute—be the most convenient or appropriate forum for this case.

RELEVANT UNDISPUTED FACTS

A. The Parties

The NFL is an unincorporated association consisting of 32 separately-owned and operated professional football teams. Compl. ¶ 3, Doc. No. 1 at 2. The NFLMC is the exclusive bargaining representative of present and future employer member clubs of the NFL. *Id.* ¶ 4, Doc. No. 1 at 2-3. Both the NFL and NFLMC are headquartered in New York. *Id.* ¶¶ 3-4, Doc. No. 1 at 2-3.

The NFLPA is the union and exclusive collective bargaining representative of all NFL players, including Johnson, and is headquartered in Washington, D.C. *Id.* ¶ 2, Doc. No. 1 at 2. The NFL, NFLMC and NFLPA have entered into a Collective Bargaining Agreement—including the Policy—which is governed by New York law.

Johnson is a professional football player who has been employed by the Philadelphia Eagles since entering the NFL in 2013. *Id.* ¶¶ 1, 17, Doc. No. 1 at 2, 5. Johnson avers in the Complaint that his residence is in Oklahoma, but in the NLRB charges pending in New York City, Johnson and his counsel identified Philadelphia as the "Address of party filing charge." Johnson's Complaint makes no mention of his Philadelphia address.

B. The New York Arbitration

In July 2016, Johnson tested positive for a prohibited performance-enhancing substance. On September 6, 2016, Johnson was sent a letter from the NFL in New York stating that, in light of his positive test and status as a repeat offender under the Policy, he was subject to a 10-game suspension. *Id.* ¶ 53, Doc. No. 1 at 12. On September 8, 2016, Johnson appealed his NFL suspension. *Id.* ¶ 54, Doc. No. 1 at 12.

Johnson's appeal hearing was held in New York City, and was presided over by James Carter, a world-renowned arbitrator who is a senior counsel in the New York City offices of WilmerHale. *Id.* ¶¶ 54-64, Doc. No. 1 at 12-13.[2] Arbitrator Carter is one of the neutral arbitrators jointly appointed by the NFLPA and NFLMC to hear appeals under the Policy, which is governed by New York law. *See* NFL CBA, Art. 70, § 1, attached hereto as Ex. B. Until just a few years ago, the arbitrators for player appeals under the Policy were unilaterally selected by the NFL; but the NFLPA bargained to change this provision and now appeals are heard by neutrals like Arbitrator Carter.

On October 11, 2016, neutral Arbitrator Carter issued his arbitration award (the "Award") sustaining Johnson's 10-game suspension. Compl. ¶ 64, Doc. No. 1 at 13.

ARGUMENT

I. THIS ACTION SHOULD BE TRANSFERRED TO THE SOUTHERN DISTRICT OF NEW YORK UNDER 28 U.S.C. § 1404(a)

28 U.S.C. § 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought…." "A decision to transfer under § 1404(a) lies within the discretion of the district court." *Nationwide Mut. Fire Ins. Co. v. Barbour*, No. 5:15 cv 456, 2015 WL 5560209, at *1 (N.D. Ohio Sept. 21, 2015) (Lioi, J.) (citations omitted).

In assessing whether transfer is warranted, courts weigh the private interests of the parties as well as other public-interest concerns. *See, e.g., O-Line Acad., LLC v. NBC Univ., Inc.*, No. 1:16 CV 90, 2016 WL 2997587, at *1-2 (N.D. Ohio May 25, 2016). Private interest factors

[2] WilmerHale, Biography of James H. Carter, *available at* https://www.wilmerhale.com/james_carter/.

include "the convenience to the parties," "the convenience of witnesses," "the relative ease of access to sources of proof," "the availability of process to compel attendance of unwilling witnesses," "situs of material events" and "the practical problems indicating where the case can be tried more expeditiously and inexpensively." *North Am. Demolition Co. v. FMC Corp.*, No. 5:05CV0104, 2005 WL 1126747, at *2 (N.D. Ohio Apr. 28, 2005) (citation omitted); *U.S. ex rel. Kairos Scientia, Inc. v. Zinsser Co.*, No. 5:10CV 383, 2011 WL 127852, at *3-4 (N.D. Ohio Jan. 14, 2011) (Lioi, J.). *See also Barbour*, 2015 WL 5560209, at *1. Public factors include "the local interest of having localized controversies decided at home" and the "administrative difficulties of courts with congested dockets[.]" *FMC Corp.*, 2005 WL 1126747, at *2; *Barbour*, 2015 WL 5560209, at *1. *See also Moses v. Bus. Card Express, Inc.*, 929 F.2d 1131, 1137 (6th Cir. 1991) (in assessing whether transfer is appropriate, a court should "consider the private interests of the parties, including their convenience and the convenience of potential witnesses, as well as other public-interest concerns, such as systemic integrity and fairness, which come under the rubric of 'interest of justice'") (citations omitted).

Moreover, although a plaintiff's choice of forum is "ordinarily" given "substantial deference," where "the chosen forum is not the plaintiff's residence, this choice is given less consideration." *Cescato v. Anthem, Inc.*, No. 1:05 CV 2004, 2005 WL 3487974, at *2 (N.D. Ohio Dec. 21, 2005). Johnson does not claim to be, or to have ever been, an Ohio resident.

Plaintiff's choice of forum is also accorded "less consideration" when "the operative events giving rise to the lawsuit took place in a forum other than that chosen by the plaintiff." *Phelps v. U.S.*, No. 1:07CV02738, 2008 WL 5705574, at *3 (N.D. Ohio Feb. 19, 2008) (Lioi, J.) (citation omitted). Johnson does not claim that a single event relevant to this lawsuit took place in Ohio.

A. The Private Interests of the Parties Strongly Weigh in Favor of Transfer

i. Convenience of the Parties. There can be no serious dispute that New York is a more convenient forum for the parties—none of whom reside in Ohio.

The NFL and NFLMC are both headquartered in New York City. New York is also a more convenient venue for the Washington D.C.-based NFLPA in light of the relative close proximity between the two cities, as well as the abundance of travel options from the nation's capital to New York. Specifically, Washington, D.C. is just a 40-minute flight from New York and its three airports (JFK, LaGuardia, and Newark), with dozens of flights daily between the two cities, thus permitting for flexible scheduling. In addition, New York City can be readily accessed by high-speed train from Washington, D.C., while rail is not a viable option from Washington, D.C. to Akron or anywhere else in Ohio.

New York is also the more convenient forum for Johnson. Although Johnson only informs this Court of his Oklahoma residence, the NLRB charges reveal a Philadelphia residence, which is where Johnson works for a significant part of the year.[3] There can be no dispute that Philadelphia is far more accessible to New York than to Ohio; the flight time from Philadelphia to New York City is a mere 30 minutes, a high-speed train from Philadelphia to New York is shorter and less expensive than a *flight* to Ohio, and New York City is also a reasonable drive (about two hours) from Philadelphia while Akron is not.

It is also easier to travel from Oklahoma to New York than to Akron. Although Oklahoma is geographically closer to Akron (1,066 miles) than New York City (1,476 miles), the flight time from Oklahoma to each of these locations is approximately the same (5 hours) and

[3] Johnson is required to be in Philadelphia for significant portions of at least 10 months each year. Specifically, as a member of the Eagles, Johnson participates in (1) offseason workouts and minicamp (held in April, May and June), (2) training camp (held in July and August), (3) preseason games (held in August and September), regular season games (held from September-December) and potential playoff games (held in January).

there are far more flights from Oklahoma City into New York City's three airports than into Cleveland Hopkins International. As such, Johnson cannot credibly claim that he would somehow be inconvenienced if this case were transferred to New York.

At bottom, the parties have a strong connection to New York (and nearby Washington D.C. and Philadelphia) whereas not one party resides in or near Akron. Transferring this case to the Southern District of New York would undoubtedly save the parties considerable time and money, and provide them with more flexible scheduling options. *Chuck Roaste LLC v. Reverse Gear*, No. 1:14 CV 1109, 2014 WL 4794584, at *2 (N.D. Ohio Sept. 25, 2014) (granting motion to transfer in part because "the costs associated with litigating this matter will be dramatically less in California as travel expenses will be greatly reduced" where the witnesses and parties were located in California).

ii. Site of Material Events and Evidence. The action brought by Johnson seeks to vacate the Award, which stems from an arbitration that (1) challenged Johnson's 10-game suspension, which was issued by the NFL in New York; (2) was held in New York and pursuant to the Policy, which is governed by New York law; and (3) was presided over by Arbitrator Carter, who is a senior counsel in WilmerHale's New York offices. As such, there can be no dispute that New York is *the* site of the material events in this action.

Moreover, because the NFL and NFLMC are headquartered in New York, and the NFLPA in Washington, D.C., the vast majority (if not all) of the evidence relating to this dispute in each defendant's possession is located in New York or Washington. No documents or witnesses reside in Ohio.

The *only* Ohio connection that Johnson's Complaint avers is that "[o]n or about June 23, 2013 to June 29, 2013, while employed by the Philadelphia Eagles NFL franchise, Johnson

worked as a professional football player in Aurora, Ohio, which is within this district." Compl. ¶ 14, Doc. No. 1 at 4. But Johnson did not sign any NFL contract—and was not "employed by the Philadelphia Eagles NFL franchise"—until July 20, 2013.[4] More fundamentally, it appears that Johnson's alleged seven days in Ohio in 2013 was to attend the League's annual Rookie Symposium which has absolutely nothing to do with this action. Johnson's counsel never raised any issue relating to the 2013 Rookie Symposium during Johnson's arbitration, the 2013 Rookie Symposium was not addressed in the Award by Arbitrator Carter, Johnson has not asserted any allegations of wrongdoing against any of the defendants relating to the 2013 Rookie Symposium and the Rookie Symposium is not the subject of any Complaint allegation. (The Symposium is an educational transition program that rookies attend.) [5]

iii. Convenience of the Witnesses. Just as the Southern District of New York is more convenient for the parties, it is also more convenient for potential witnesses. The defendants are headquartered in New York and Washington, D.C., and thus a vast majority of any potential witnesses from these organizations are located in those two cities. As set forth above, New York is a more convenient destination from each of those locales when compared to Ohio, which weighs in favor of transfer. *See FMC Corp.*, 2005 WL 1126747, at *2 (granting motion to transfer to the W.D.N.Y. and stating that New York provided "the most convenient forum for the parties and witnesses" where a number of defendant's employees with potential to be called as witnesses resided in the W.D.N.Y., a potentially key witness resided in the W.D.N.Y., and

[4] Gregg Rosenthal, *Lane Johnson, Philadelphia Eagles agree to contract*, July 20, 2013, *available at* http://www.nfl.com/news/story/0ap1000000219263/article/lane-johnson-philadelphia-eagles-agree-to-contract. Indeed, elsewhere in the Complaint, Johnson coyly omits the date he signed with the Eagles. Compl. ¶ 17, Doc. No. 1 at 5.

[5] The lack of any nexus to Ohio further means the NFLPA may not be subject to personal jurisdiction here. The NFLPA expressly preserves personal jurisdiction as an affirmative defense and its right to move to dismiss on this basis in the event this transfer motion is denied.

where, in contrast "there lack[ed] any convenience to the parties and witnesses in litigating the dispute in Ohio").

Nor would Ohio be a more convenient forum for the two non-party witnesses subpoenaed by Johnson (in contravention of Federal Rule 26), who are located in California and South Carolina. *See* Ex. A. In particular, although the travel time from each of these locales to Ohio and New York is approximately the same, the vastly greater number of daily flights to and from New York's three airports alone make it a far more convenient forum.

Finally, no witness—let alone any material witness—resides in this district.

B. Public Interest Factors Also Strongly Weigh in Favor of Transfer

i. Local Interest. As set forth above, none of the parties reside in Ohio and none of the material events giving rise to plaintiff's action took place in Ohio. Since there is nothing even remotely connecting this jurisdiction to the instant dispute, it has no interest in adjudicating this action. *See, e.g., Zinsser Co.*, 2011 WL 127852, at *7 ("Because Ohio has no significant connection to the underlying facts, the interest of justice would be better served by transferring the action to one of the two districts where the material events occurred.") (citation omitted).

New York, on the other hand, has a material relationship to this dispute, and in turn, possesses the greatest interest in resolving this controversy. As shown above, New York is the *situs* of the material events giving rise to this dispute—Johnson's discipline and subsequent arbitration hearing—and it is also where two of the four parties reside, further militating in favor of transfer. *Reynolds v. Merck Sharp & Dohme Corp.*, No. 3:15 cv 397, 2016 WL 3090951, at *4 (N.D. Ohio June 2, 2016) ("The public interest is furthered by adjudicating the non-Ohio resident cases in the states in which the operative events occurred."); *Veteran Payment Sys, LLC v. Gossage*, No. 5:14CV981, 2015 WL 545764, at *9 (N.D. Ohio Feb. 10, 2015) (Lioi, J.) (noting

that because the underlying conduct primarily took place in North Carolina, "most of the public factors would also favor a transfer").

ii. Administrative Difficulties. Although a greater number of cases are filed before the Southern District of New York than this Court, the number of pending cases per judge was nearly identical for the year ending September 30, 2016. *See* "Federal Court Management Statistics, September 2016" (noting that judges in the Southern District of New York averaged 611 cases, while judges in this district averaged 585 cases).[6] *Cf. Braman v. Quizno's Franchise Co., LLC*, No. 5:07CV2001, 2008 WL 611607, at *6 & n.6 (N.D. Ohio Feb. 20, 2008) (Lioi, J.) (courts had "similarly congested dockets" where transferee court had 401 filings per judge and this district had 366). Since the dockets of each court are similarly congested, plaintiff cannot claim that this case would move slower if transferred to New York.

[6] *See* U.S. Courts, Federal Court Management Statistics (September 2016), *available at* http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0930.2016.pdf.

CONCLUSION

For all of the foregoing reasons, this matter should be transferred to the United States District Court for the Southern District of New York, or in the alternative, the District Court for the District of Columbia, pursuant to Section 1404(a). To the extent the Court believes it would be helpful, the NFLPA requests oral argument on this motion.

Respectfully submitted,

/s/ Thomas D. Warren
Jeffrey L. Kessler (*pro hac vice* pending)
David L. Greenspan (*pro hac vice* pending)
Jonathan Amoona (*pro hac vice* pending)
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166-4193
Telephone: (212) 294-4698
Facsimile: (212) 294-4700
Email: JKessler@winston.com
Email: DGreenspan@winston.com
Email: JAmoona@winston.com

Thomas D. Warren
Baker & Hostetler LLP
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114-1214
Telephone: (216) 621-0200
Facsimile: (216) 696-0740
Email: TWarren@bakerlaw.com

Ann Yackshaw
Baker & Hostetler LLP
Capitol Square, Suite 2100
65 East State Street
Columbus, OH 43215-4260
Telephone: (614) 228-1541
Facsimile: (614) 462-2616
Email: AYackshaw@bakerlaw.com

Attorneys for Defendant/Respondent
National Football League Players Association

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

Pursuant to Local Rule 7.1(f), the undersigned certifies that the foregoing memorandum adheres to the page limitations set forth in Local Rule 7.1(f) for memoranda relating to non-dispositive motions.

/s/ Thomas D. Warren

Attorney for Defendant/Respondent
National Football League Players Association

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Thomas D. Warren

Attorney for Defendant/Respondent
National Football League Players Association